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10/565,002	01/19/2006	Santiago Echeverri	2590-146	5148
23117 7590 07/26/2010 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
YANG, ANDREW				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/565,002  
Filing Date: January 19, 2006  
Appellant(s): ECHEVERRI, SANTIAGO

\_\_\_\_\_  
Santiago Echeverri  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed on April 12, 2010 appealing from the Office action mailed on August 10, 2009.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claim 1 stands rejected.

Claims 2-12 are canceled.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any

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advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS."

New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

#### **WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Grounds of rejection directed to cancelled claims 2-12 are withdrawn.

#### **(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

#### **(8) Evidence Relied Upon**

6743235

Subba Rao

6-2004

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Subba Rao (U.S. Patent No. 6743235).

Subba Rao discloses a guide 60 having a shaft 80, an instrument fixing means at end 62 of the frame for attaching to tool 10. The frame is situated between the shaft 80 and instrument fixing means. A pointing means is situated at the distal 84 end of the shaft 80. The pointing means is a laser 90, and is considered situated at the distal end since the battery end 94 of the laser 90 is situated at a distal end of the shaft 80. An orientation means 60 defines a

reference plane. The orientation means 60 comprises a bubble level 40 and is thus considered a dual-axis type since the bubble level 40 and the orientation pillar are on two different axes. The guide device is used with an acetabular cup instrument 10 having a shaft 20 a handle 24 and a distal end for receiving a cup positioner 100. The fixing means at end 62 is coupled to the tool, and thus is considered to be capable of having a quick release, such as a screw.

#### **(10) Response to Argument**

In response to Appellant's argument that Subba Rao fails to disclose a dual-axis type orientation means, the Examiner respectfully disagrees. According to Appellant's disclosure, a dual-axis type orientation means is adapted to define a reference plane to allow the instrument to be oriented along two directions, thereby defining a plane (Paragraph 19). It can be seen that the orientation means as defined by the Examiner is a dual-axis type orientation means according to Appellant's definition. The orientation means of Subba Rao as stated above comprises pillar 60 and bubble level 40. As seen in Figures 6-7, while orienting, the device is moved up and/or down (two directions), thereby defining a plane through which the device travels during the step of orienting. Furthermore, while the bubble level 40 serves to orient the device in one direction, the pillar serves to orient the device in a second direction. The bubble 55 may stay level even through rotation of the device, however, the pillar 60 serves as a rotational reference for the user. For example, when a user looks straight down at the device, the bubble level will essentially hide the pillar from view when oriented along the XY axis as seen in Figure 6. It is noted the bubble

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level 40 itself can serve as a reference for rotation. The bubble 55 will float closer to a certain side of the level depending on the rotational angle of the device.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Andrew Yang/

Examiner, Art Unit 3775

Conferees:

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art Unit 3775

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732